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W H E T H E R

A King Elected and Declared by the Lords Spiritual and Temporal, and Commons Assembled at Westminster 22 of January 1688. coming to and Consulting with the said Lords and Commons; doth not make as compleat a Parliament, and Legislative power, and authority; to all intents and purposes, as if the said King should cause new Summons to be given and new Elections to be made by Writs.

THAT the Highest and Supream Court of this Nation (according to it's ancient constitution) is the Parliament, I need not now labour to make out; the present business being to find out and discover the substantial and real parts of a Parliament, for thereby shall we be satisfied touching the question in hand.

A Parliament (as Sir *Edward Coke* in his *Jurisdiction of Courts fol. 1.* tells us) consists of the Kings Majestie (sitting there as in his Politick Capacity) and of the three Estates of the Realm (that is to say) 1st. The Lords Spiritual, as Archbishops and Bishops: 2dly, The Lords Temporal, as Dukes, Marquesses, Earls, Viscounts and Barons: 3dly, The Commons of the Realm, (that is) Knights of Sheers, Citizens and Burgessees.

As to the Lords both Spiritual and Temporal, Sir *Edward Coke* in the same place tells us, that every one of them being of full age when a Parliament is to be held, ought of right to have a Writ of Summons to come to that Parliament. As to the Commons, he says, they are respectively elected by the Shires or Counties, Cities and Burroughs by force of the Kings Writs. *Crompton* in his *Jurisdiction of Courts fol. 1.* says, the High Court of Parliament is the Highest Court in England, wherein the King himself sits in person; and comes thither at the beginning of the Parliament, and at the end thereof, and at any other time when it pleaseth him during the Parliament.

To this Court come all the Lords of Parliament, as well Spiritual as Temporal, and are severally summoned thither by the Kings Writ.

There is a Writ also sent to every Sheriff of *England* and *Wales* to elect Knights for Parliament, &c. Saith that Author.

But the Lords and Commons assembled at *Westminster* 22 of *January* 88. were not summoned thither by the Kings Writ, and therefore, as is objected, though the King afterwards comes to them, yet such King, Lords and Commons cannot be a Parliament.

In answer to which, and to demonstrate whether upon the Kings coming to, and consulting with them, the King and them make a Parliament, I must premise,

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that in extraordinary cases, such as of which there is no direct Example, we must take our directions from the Resolutions and Practices in such Cases as come nearest and are most like to them; and by Consequences from thence make our Resolutions as may be most agreeable to Reason.

It is generally admitted, that in an Hereditary Kingdom, if the King should die without any Heir either Lineal or Collateral, the Crown in that case would devolve, or as it were escheate to the whole People and Nation; and that hereupon the Estates and Representatives of such a Nation may dispose of the Crown to whom they please, or quite alter and change the Government into what form they think fit.

This hath been frequently adjudged and practiced, one Instance whereof was in the Emperor *Charles the Gross*, who dying without any Heir, the Kingdoms which were under him, did severally chuse themselves Kings: *France* chose *Charles the Simple*; In *Italy* some chose *Berengarius*, and some *Guido*; and the *Germans* chose *Arnolph* Duke of *Bavaria* for their Emperor. *Ferdinand* King of *Portugal* dying without lawful Heir, the Estates of that Kingdom assembled themselves at *Coimbre*, and elected *John* the late Kings Bastard for their King, and in their Decree of Election it is recited, that King *Ferdinand* died without any lawful Issue or Kindred, whereby according to the Law of Nations, it was lawful for them to chuse who they pleased for their King or Governor.

In like manner, it is where a King doth abandon, forsake or desert his Government, by going out or flying out of his Kingdom without appointing any Guardian to protect and take care of his People in his absence, whereby the Throne is become vacant; in such a case, the Estates of such a People may appoint another King or Governor.

And to come close to our present Case; King *James* the Second whether out of fear, or for what other reason it is not material, but away he goes or rather flies out of his Kingdom; abandons, forsakes and leaves his people unguarded and undefended, at the Mercy of a Forreign Army, even in the Heart of the Country; without so much as leaving a Guardian or Great Seal behind him: His great Officers and Ministers of State flying some one way and some another. What could then be done but was then done? viz. Several of the Lords Spiritual and Temporal, many of the Knights, Citizens and Burgeses of a former Parliament; the Aldermen and divers Common Council of our Capital City of *London*, addrested themselves to his Highness the Prince of *Orange*, desired him to take upon him the Administration of Publick Affairs both Civil and Military, for the Preservation of our Religion, Rights, Laws, Liberties and Properties, and of the Peace of the Nation, until the then intended Convention of the three Estates or great Council of the Realm: they also desired his Highness to send Letters subscribed by himself to the Lords Spiritual and Temporal that were Protestants to meet on the said 22 of *January* at *Westminster*, the Summons to Parliament being alwaies omitted to known Popish Lords since the Test-Act. And they desired his Highness to send the like Letters to the several Shires, Counties, Universities, Cities, Burroughs and Cinque Ports of the Nation, for Electing of such number of persons to represent them, and to meet on the said 22 of *January*, for the purposes aforesaid, as of right were to be sent to Parliaments, with directions that such Elections should be made by such persons only as according to the ancient Custom and Laws, of right ought to chuse Members for Parliament: And accordingly such Letters were sent, and due notice given, and Elections accordingly were made, and the said Lords Spiritual and Temporal, and the Knights, Citizens and Burgeses so elected met on the said 22 of *January*: And after mature and deliberate Consideration, they Resolved, That the Prince and Princess of *Orange* should be King and Queen of *England*, &c. for their natural lives and life of the longer Liver of them, and that the sole and full exercise of the Regal Power be in the Prince only, in the name of both.

Now

Now after the Prince and Princess of *Orange* are proclaimed King and Queen of *England* as aforesaid, and he comes and Consults with the three Estates so assembled, I would fain know what is wanting in that Assembly to make them a full and compleat Parliament; or what can be had more than is in this Convention of King, Lords and Commons, if the said King should issue out Writs for calling a new Parliament? Certainly nothing more can be had material to the Essence of a Parliament.

If the substantial parts of a Parliament be, and consist of an Assembly or Convention or Meeting together of the King and the three Estates, as I have shewed that it is out of the best Authorities we have, the difference of the Lords and Commons being call'd by Writ or by Letter is nothing material since both Writ and Letter are to the same effect; and in some ancient Records it is mentioned that Parliaments should be summoned by Letters, particularly in King *John's* great Charter in the 17 year of his Reign, he promises to summon the Bishops, Abbots, Earls, &c. *per Literas nostras* by our Letters. *Orig. Jud. 17.*

The Prince of *Orange's* not being King at the time of his sending forth his Letters matters not, for he was the Person to whom the Administration of the Government was then committed.

It is evident, that in many Parliaments it was not so material how the King, Lords and Commons came together, as that they were together.

I dare appeal to any man, if the manner of Calling together the three Estates of the Realm by the Prince of *Orange's* Letters was not a much fairer proceeding, considering the state of Affairs, as to the Calling of them together, then was in several Cases wherein they were never doubted, to be a Parliament when joyned with a King. I shall instance only a few of many that might be named.

Edward the Second being imprisoned by his Queen, Son and Nobles, they issue forth Writs in the Imprisoned Kings Name to summon the Lords, and to chuse Knights, Citizens and Burgesses to meet at *Westminster* 16 of *Jan.* 1325. This one would think was pretty hard, and an absolute force upon the King by making use of his Name against his Will, so that it could not be said to be his Act; yet the Lords and Commons being met they deposed *Edward* the Second, and declared his Son *Edward* King, and this new King, and the Lords and Commons, so (as I may say) irregularly convened together, made several Acts of Parliament, and have been ever since adjudged a good Parliament to all intents and purposes without any subsequent Act of Confirmation.

In like manner *Rich. 2.* being taken Prisoner by *Henry* Duke of *Lancaster*, the Duke issues forth Writs in the Kings Name (the King then in Prison) to summon the Lords and to elect Representatives for the People, to meet at *Westminster* 13 of *Sept.* 1399. These being met by this irregular Summons they depose *Richard* the Second, and declare the Duke of *Lancaster* King; and that new King and the Lords and Commons so irregularly convened, being joyned together, were and are to this day adjudged, deemed and taken to be a good Parliament to all intents and purposes without any Act of Confirmation by any subsequent Parliament.

The Lords and Commons assembled at *Westminster* 25 of *April* 1660. were conven'd by Writs in the Name of the Keepers of the Liberty of *England*, who were Usurpers; yet when King *Charles* the Second came to them, and they received him as King, he and they together were adjudged a Parliament and they Enacted that they should be so taken, and they made many Laws, which immediately were put in execution; and they continued as a Parliament, until 29 of *December* following, which was for above eight Months; but indeed most or all those Acts were afterwards confirmed by a subsequent Parliament conven'd by the Kings Writs in *May* 1661. but that Confirmation, according to many good Judgments, was rather to satisfy some Scrupulosity than out of necessity

cessity, most of the said Acts having in a great measure had their Effects before the subsequent confirming Parliament began.

If upon the Prince of *Orange's* being declared and Proclaimed King he comes to the Convention of Lords and Commons Assembled at *Westminster*: If the same number of Lords be summoned thither that of Right ought to be summoned to Parliament, if the same number of Knights, Citizens and Burgeesses be duly chosen, as ought to be chosen, to represent in Parliament, then consequently there: are all the Substantial and Essential parts of a Parliament met together, and being so, where's the Necessity, where's the Advantage, where's the Prudence to dissolve these and thereby give new trouble of new Summons, of new Elections, lose a great deal of time, suffer irrecoverable loss and damage to *Ireland* and our Allies abroad; and after all, at the next meeting, be but where we now are, as to the Essential parts of a Parliament, there being nothing more to be had at any other time, but what we have already.

I can see no material difference as to the making of a Parliament, whether the King come to the Lords and Commons being assembled together and joyn with them, or the King by his Writ or Letters call them to him: and therefore I conclude, if the Prince of *Orange* after he is Declared and Proclaimed King doth come to the Lords and Commons now Assembled at *Westminster*, and advise with them, in that instant that the King so comes and advises with them, they will be as good a Parliament, as if he should issue out new Writs of Summons, and they should meet again by force thereof.

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